Is the legal framework of inland navigation in Europe suitably adapted?

Jean-Marie WOEHLING
Secretary General of the CCNR

According to widespread opinion, there are "legal obstacles which hamper the establishment of a harmonised and competitive pan-European inland waterways transport market" (point 13 of the Declaration adopted by the Pan-European Conference in Rotterdam, 6th September 2001).

The aim of my presentation today is to identify the nature of these legal obstacles and how significant they are.

1) Heterogeneous or uniform nature of legal instruments applicable to inland navigation

It is often said that inland navigation in Europe would be torn asunder by several different legal systems – that resulting from the Mannheim Convention, that set up by the Belgrade Convention and that resulting from Community treaties. The diverse nature of these legal systems would be one of the obstacles to the development of this transport mode.

Although in theoretical terms this is not inaccurate, this view corresponds less and less to the actual situation in the field. A silent revolution is under way, which is in the process of harmonising technical and legal rules for inland navigation in Europe.

- The revised version of Community Directive 82/714 on technical specifications for vessels, which will come into force shortly and which contains the ruling regarding inspection of vessels on the Rhine, henceforth contains the same technical specifications for vessels (that is regarding the Rhine and inland waterways with the same characteristics). As a result, there will be mutual recognition of certificates for Rhine vessels and of Community certificates. Now that a significant number of Danube states have joined the European Community, these technical rules will also apply to a considerable length of the Danube. Uniform technical specifications for vessels are now more or less accepted.

- Regarding boatmaster certificates, a similar process is in hand. The CCNR presented proposals to the European Community, which constitute a harmonised framework for delivering certificates for the Rhine and the European Community. Once this has been set up, this framework will enable mutual recognition of Rhine and Community certificates. Such a framework could also be set up for the Danube Commission. To complete this measure, the Rhine and Danube Commissions are discussing the question of a harmonised regime for the verification of specific knowledge required for certain stretches of the rivers (Streckenkenntnisse).
Furthermore, an initiative has been launched to harmonise employment profiles, i.e. the references used by States to define the different functions (boatman, etc) and the corresponding vocational skills. Work has started on an inventory and comparison of these employment profiles and will be presented at a seminar to be organised by the CCNR in Rotterdam, 9th November 2005. The outcome of this initiative could be the establishment of common references for national training institutions.

- Regarding the transport of hazardous substances, the ADNR of the CCNR served as the basis for defining the pan-European ADN agreement shortly to come into force. This will ensure that the content of the ADN and the ADNR is identical so that they will be recognised as being equivalent. If a Community directive is adopted, it will adopt the same standards. Here again, in this field, uniformity is almost completely ensured.

Thus, despite the difference between legal systems, uniformity of the applicable rules is ensured or will be in the near future. It is no longer correct to talk about inland navigation in Europe being divided by different legal systems. Uniformity is being achieved pragmatically, taking mutual account of what has been achieved by the other parties involved.

Some work still has to be done to complete this process. But the method chosen is the right one. The time is right to invite all institutions concerned to continue their task of aligning the substance of technical specifications.

Whether or not we should go beyond this raises two questions:

- This begs the question of whether or not the various legal foundations of these specifications, uniform or in the process of becoming uniform, should be abolished. Uniform legal foundations for rules, if harmonised by other means, would create a monopoly in preparing standards, thereby running the risk of making the preparation of these standards less efficient, as is the case for all monopolies.

- Is absolute uniformity a good thing? The account taken of the specific characteristics of certain inland waterways or of certain sectors of activity must be maintained. It is important to continue reflecting on what must be uniform and what must remain specific.

2) **Access to markets**

Integration is well advanced in this field: and such integration is now also well developed within the Community territory; the Community principles of freedom of access henceforth apply to a good part of the Danube; moreover, all Member States of the Community, and consequently a large number of Danube States, have full access to the Rhine market. This means that the principle of freedom of access to markets for transport by inland waterways has been widely ensured.

Where can progress still be achieved?
- **cabotage**: even within the European Community, cabotage (defined as transport between two ports located within the same State) is not entirely open to vessels registered in a State other than that of the place of transport. It may only take place on a "temporary basis". If such transport is to be carried out on a permanent basis, then the carrier must set up a head office or establishment in the State concerned and be licensed to carry out international transport (Rule CEE 3921/91 of 16th December 1991 art 1). On the non-Community Danube, such transport can only be carried out by a national carrier.

There are no such restrictions on the Rhine: Rhine cabotage there (transport between two locations on the Rhine) is open unconditionally to all Community nationals and to Switzerland. Moreover; licence to carry out Rhine cabotage may be granted to carriers who are nationals of another country.

This raises the question of whether such cabotage should be further liberalised. This would only be possible satisfactorily if the operating conditions were harmonised from the social and tax points of view. No doubt there will have to be further clarification of the legal regime relative to cabotage (see points 5 and 6 below).

- **reciprocal liberalisation of Community and non-Community markets**

The European Community will very shortly be enlarged to include inland waterways in Rumania and Bulgaria. And this logically raises the question of Serb and Ukrainian inland waterways linked to the Community waters of the Danube. (Russia for its part is a distinct market not linked with Community waterways).

Integration is partially realised to the extent that it concerns transport on the Danube (excluding domestic transport). In order to go further, agreements will have to be concluded between the European Community and the non-Community Danube States. Until that time, it appears possible for bilateral agreements to be concluded between Member States of the Community and those States, provided that the Community prerogatives are respected (see recent decisions by the European Court of Justice): decision of 2nd June 2005 Commission versus Luxembourg C-266/05 and of 14th July 2005 Commission versus Germany C-433/05.

3) **Contract law governing transport on inland waterways**

The CMNI Convention has set up a common European regime for this transport contract. The convention came into force on 1st April 2005. Even though it only concerns a small number of countries (Hungary, Luxembourg, Rumania, Switzerland, Croatia), it is destined to apply very shortly to an increasing number of transactions on inland waterways.

All river states in Europe are called upon to adhere to this Convention as quickly as possible.
Is there a need to go any further? Additional protocols to this convention have been foreseen. It would appear sufficient to have standard contracts and specimen general conditions for operation, developed by the sector for the whole of Europe;

4) **Alignment of liability or tort law**

Despite the considerable efforts to develop tools for harmonisation in this field (CLN, CLNI, CRTD, CRDNI, etc) results obtained so far are limited. The only Convention which has become legally binding, the CLNI, has been ratified by only a handful of States and, according to some, would require revision.

Given the low level of interest in the matter, one might be tempted to draw the conclusion that further harmonisation in this field in not indispensable.

However, in order to avoid unfair competition, the same liability rules will have to be applied for the same services and the guarantees to be provided by market players are sufficient and equivalent. A revised CLNI could serve as a framework for achieving these aims.

In the meanwhile, each State must ensure that the liability regime applicable on its territory guarantees effective compensation for damage caused. In order to move in this direction, generalised compulsory insurance on certain inland waterways could be a simple and efficient measure.

5) **Tax harmonisation**

Is tax harmonisation part of the "level playing field"? Although it is required by those who believe themselves to be victims of unfair competition, it is on the other hand rejected by those who believe they should benefit from support and incentive measures. Indirect taxation has already been made uniform largely thanks to the Community regime of VAT; however, direct taxation is still an area where States wish to retain their scope for manoeuvre, in particular to support their inland navigation. Consequently the adoption of advantageous tax law for companies is considered as being legitimately accepted in competition between States.

Furthermore, when a tax measure's scope of application is territorial and it applies to all economic players in that territory, it cannot be considered as causing unfair competition.

Similar remarks could be made about public policy with regard to subsidies to navigation and entitlelment to use infrastructures.

Under these circumstances, the aim of general tax harmonisation for inland navigation appears to be both debatable and not very realistic.

On the other hand, more limited actions should be favoured. Accordingly, if there is no harmonisation, it would be desirable to have sufficient transparency with regard to tax advantages or barriers. A comparative analysis could identify those measures which would encourage the development of inland navigation.
Moreover, the tax conditions for certain categories of services should perhaps be defined (cabotage).

6) **Social legislation**

   In this field too, what is considered by some to be unfair competition, is seen by others simply as the establishment of a legitimate competitive edge.

   Social harmonisation is scarcely possible on the European level, unless exceedingly cumbersome conditions are imposed on employers in some countries or by imposing an unacceptable deterioration of conditions for workers in other countries.

   However, it is appropriate that clear, verifiable rules be applied. All too often, the situation is unclear thus creating a legal vacuum, which leads to legal constructs being worked out in order to avoid being subject to normal legal obligations. Consequently, it is desirable that clearer rules be defined regarding applicable law and that controls are made more efficient.

   One solution proposed would be to apply the law of the country of origin of the workers, even if these workers are employed for a protracted period in another country where they are actually providing the service. It would appear difficult to accept this method if the social conditions in the country of origin are essentially different from those of the country where the service is provided.

   Care must be taken to ensure that workers carrying out similar tasks (on the territorial and functional levels) are subject to equivalent social regimes. Rather than trying to create uniformity of these regimes across Europe, it appears to make more sense to do this on the level of homogeneous territorial entities (for example a river basin).

7) **Prospects for simplifying and reducing the legal framework**

   The present current of deregulation and simplification of administrative issues raises the question of whether certain regulations are not superfluous or overly meddlesome. In the context of inland navigation does it not make more sense to reduce the legal straight-jacket?

   By reducing the regulatory constraints, it can indeed be possible to promote dynamism in these sectors and reinforce the sense of responsibility of economic players.

   It should however be noted that the high level of safety of inland navigation is considered to be one of its assets, particularly with regard to the transport of hazardous substances. Maintaining this high level of safety is a widely accepted aim. Furthermore, new constraints relating to the environment appear to be inevitable (degassing of tankers, engine emissions of vessels, double hull, port facilities, etc). Lastly, in view of the considerable development of passenger cruising, appropriate safety measures should be developed for that sector. Consequently it appears fairly unrealistic to consider reducing these requirements.
It is a question here of determining whether the same level of guarantee can be provided by less restrictive regulations. And this is a complex question. Uniformly applicable rules and legal security for economic players require detailed regulations. On the other hand, it may be possible to relax procedures, to facilitate arrangements and to avoid useless formalities. In particular, simplified procedures for declaration and inspection could be developed using one single processing unit. For example, legislation regarding vessel registration could be analysed once more with a view to simplification and avoiding any inappropriate requirements.

Governments could be recommended to undertake studies along these lines.

Here again, it would be appropriate to examine the question of a satisfactory system for verifying rules applicable to inland navigation. The increasing degree of integration of inland navigation in Europe opens up the possibility of activities for inland navigation vessels on a network of inland waterways across Europe. The aim of generalised freedom of navigation under equal conditions of competition implies that the regulatory framework for this navigation activity can be effectively verified to ensure non-violation of applicable sectoral rules. Thus it is a question of finding a framework which will guarantee that order is respected without involving bureaucratic constraints on economic players. There are questions in this context as yet unanswered regarding the possibility for intervention and co-ordination of river police.

A co-ordinated system of traffic control would have to be developed for inland navigation based on:

- co-ordination and exchange of information between national river police forces (in particular with a view to avoiding any duplication of inspection of the same vessels);
- adopting a rule of "River State Control" drawing on Port State Control;
- creating standardised ship's documents to facilitate inspection (ship's certificate, licence, etc). The idea of having an ID document for the master regarding his crew seems worthwhile; this document would verify that the crew is in compliance with national legislation applicable thereto.

**Conclusion**

By way of conclusion, it can be said that the legal framework for inland navigation is relatively well adapted to evolutions in the field and its integration on the European level. As to harmonisation and opening up of markets, inland navigation is not lagging behind other modes of transport. The legal rules applicable to this activity do not constitute an obstacle to its development.

Although harmonisation of the legal framework can be further improved, it seems inappropriate if not even unrealistic to wish to bring this about through centralising all legal powers involved. On the contrary, exchange of information and concertation must be stepped up.
Among possible recommendations, the following could in particular be mentioned:

- provide support for harmonising employment profiles with a view to facilitating worker mobility in this sector and creating an attractive working framework;

- encourage States to ratify the CMNI Convention;

- continue work on harmonised liability law in the field of inland navigation, by revising the CLNI Convention, in particular so that it can be opened to all European River States;

- develop comparative studies of tax regimes and public subsidies for inland navigation;

- clarify the conditions for applying social legislation in international inland navigation to prevent any possible unfair competition;

- carry out studies to simplify legislation applicable to inland navigation;

- develop a co-ordinated framework on the European level for monitoring transport on inland waterways.